

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2659 of 1989

with

SPECIAL CIVIL APPLICATION No 2660 of 1989

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HEIR OF MOHMADBHAI KASAMBHAI, RAHIMBHAI MOHMADBHAI

Versus

STATE OF GUJARAT

Appearance:

MR PJ VYAS for Petitioner
Mr.H.L.Jani, AGP for Respondent No. 1 & 2
NOTICE SERVED for Respondent No. 3

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 28/07/2000

CAV JUDGEMENT

A common order is being passed in this Special

Civil Application under Article 227 of the Constituion of India and the connected Special Civil Application No. 2660 of 1989 of Amirhusen Gulamhusen Ajmeri Vs. State of Gujarat and Others as they arise out of a common order passed by the Secretary to the Revenue Department of the State of Gujarat.

2. The facts leading to these 2 petitions are as under:-

3. Hamidullakhan Mirbajkhan sold the land of Survey No. 281/2 situated in Village Okaf, Tal. City, Dist. Ahmedabad admeasuring Area 0.17 gunthas to Kamaluddin Alibhai (respondent no.3 herein) by registered sale deed dated 30.7.1968. The respondent no.3 then sold 829 sq.yards of land by registered sale deed dated 29.6.81 to the present applicant and by another sale deed dated 29.6.81 sold area 829 sq.yards to the applicant Amirhusen in connected Special Civil Application No. 2660 of 1989.

4. According to the petitioners, the land of S.No.281/2 is Devasthan Inam Land owned and possessed by Sarkhej Roza Committee. The Sarkhej Roza Committee at its meeting held on 29.9.68 had granted non-agricultural permission to Hamidullakhan Mirbajkhan. The case of the petitioner is that prior to abolition of Devasthan land by the Devasthan Inam Abolition Act which came into force from 15.11.69, the Inamdar was competent to grant permission for non-agricultural use.

5. The City Deputy Collector initiated proceedings against the 2 applicants under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holding Act, 1947 on the alleged breach of the provisions of Section 8 & 9 of the said Act. The City Deputy Collector by impugned order dated 17.8.1994 held that the sale of the land is in violation of Section 9 of the Act of 1947. he therefore imposed a fine of Rs.250/- on each of the applicants and directed that the possession of the land be restored to the original landlord. The petitioners came to know about the passing of the order against them by the City Deputy Collector only when they went to the Office of the Talati Cum Mantri for payment of land revenue. They thereafter obtained copy of the order of the City Deputy Collector and preferred a revision under Section 25 of the Bombay Land Revenue Code. The revision was heard and decided by the Secretary in the Revenue Department of the state of Gujarat who by the impugned order dated 29.9.88 confirmed the order of the City Deputy Collector. He also directed the Collector to inquire into the alleged violation of

the provisions of the Act of 1947 and submit a report. Aggrieved by the impugned orders of the Revenue Authorities, the 2 applicants have approached by these 2 Special Civil Applications.

6. Learned Counsel appearing for the applicants placed before me extracts from the Land Revenue Manual which was being followed prior to Devasthan Inam Abolition Act of the year 1969. Attention of the Court is invited to the following provisions contained in the Revenue Manual to show that the Inamdars were invested with the powers of the Commissioner to grant permission for non-agricultural use of the Inam land. The relevant part of the Revenue Manual is as under:-

Special powers granted to holders of alienated lands (S.88).

The Commissioner can grant certain powers to a holder of alienated lands. (The powers can be issued to an agent of the holder also.).

The powers may be any or all of the following:-

1.
2.
3.

4. to exercise powers of Collector under Ss. 65, 66; [S.65 deals with the powers of the Collector to grant permission to an occupant of agricultural land to use it for non-agricultural purposes; and S. 66 lays down the rules regarding the penalties (summary eviction, new assessment and fine) to which an occupant who uses land without such permission is liable.]

5.
6.

Note: (i) Powers mentioned in (3) to (6) can be given to holders of lands to which a survey settlement has been extended under S.216. Inamdars desirous of being invested with these powers have to apply in writing to have survey settlement extended to

their villages. The powers are not granted unless the tenants concerned are protected from rack-renting; and are now conditional on the inamdar undertaking in case of failure of rains to grant suspensions and remissions on a scale fixed by the Government.

7. Reliance is placed on behalf of the applicants on the decision of the Learned Single Bench of this Court in Special Civil Application No. 2908 of 1989 decided on 1.5.2000 in which the Learned Single Judge gave effect to the provisions of the Revenue Manual to come to the conclusion that Inamdar in the relevant year was competent to grant Non Agricultural permission.

8. Learned Counsel for the petitioner points out that in the sale deed obtained by the applicants, the vendor has clearly mentioned grant of N.A. permission to them by the Inamdar. Ld. Asst. Govt. Pleader appearing on behalf of the State and the Revenue Authorities in reply submits that there was no evidence before the Revenue Authorities to show that the Inamdar had granted N.A. permission to the vendor.

9. I have been explained the contents of the impugned order of the Revenue Secretary which are in Gujarati. The relevant part of the impugned order is that the Revenue Secretary has noted the facts that in the revenue records of the year 1982-83 the land is shown under nonagricultural use and there is a garage and factory existing on the land. The Revenue Secretary in latter part of his order proceeds on an assumption that N.A. permission might have been granted by the Inamdar but in his opinion no value can be attached to such N.A. permission in the eye of law. He has held that the Inamdar had no powers to grant N.A. permission. In the instant case, the Ld. Counsel has produced before me the relevant part of the Revenue Manual (quoted above) which was in force at the relevant time. It shows that the power of the Collector under Section 65 and 66 to grant N.A. permission could be delegated and conferred on the Inamdar. It cannot therefore be held that the Inamdar had no power to grant N.A. permission in respect of Devasthan land. on behalf of the Revenue Authorities, Ld. Counsel contended that mere mention of grant of N.A. permission by Inamdar in the sale deed obtained by the applicants is no evidence of the fact of a valid permission. As has been found above, the Revenue

Secretary decided against the applicants assuming that N.A. permission granted by Inamdar existed. But as held above he wrongly came to the conclusion that there was no power with the Inamdar to grant N.A. permission.

10. In my considered opinion, the impugned orders of the Revenue Authorities are passed in complete disregard of the provisions contained in the Revenue Manual which show that the power to grant N.A. permission could be delegated to the Inamdar. Both the applications are allowed. The impugned orders in both the cases of the applicant dated 17.8.1984 of the City Deputy Collector, Ahmedabad (Annexure A) and dated 29.9.1988 (Annexure B) passed in revision by the Revenue Secretary are hereby quashed and set aside. Rule made absolute. In the circumstances of the case, the parties shall bear their own costs.

(D.M.Dharamadhikari, CJ)

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